



EU-Montenegro Civil Society Joint Consultative Committee

Gradanska alijansa - Civic Alliance

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CHAPTER 24 Justice, freedom and security, with a special focus on migration

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Article 44 of the Constitution of Montenegro provides for the right to asylum: ‘A foreigner who has a justified fear of persecution based on race, language, religion, nationality, membership of a group or political beliefs may apply for asylum in Montenegro. A foreigner may not be expelled from Montenegro to a country where, on account of his/her race, religion, language or nationality, he/she faces the risk of capital punishment, torture, degrading treatment, persecution or severe deprivation of the rights guaranteed under this Constitution. A foreigner may be expelled from Montenegro only on the basis of a decision of a competent authority following a procedure laid down by law.’ Montenegro is a signatory to the 1951 Geneva Convention. The asylum system of Montenegro was set up by the Asylum Act¹, which entered into force on 25 July 2006 and has been applicable since 25 January 2007. The main tenets enshrined in the Act comprise the prohibition of repatriation and expulsion, non-discrimination, data security and confidentiality, reunification of families and protection of people with special needs. The Act also contains provisions on legal protection and mandatory cooperation with UNHCR.

In December 2016 the Parliament of Montenegro passed a new Act on the international and temporary protection of foreigners, which has been applicable since January 2018. Experts and international stakeholders following the implementation of the Act agree that both suitable international protection standards and appropriate provisions of EU law have been built into the Act. However, the Act has been criticised for using new terminology (e.g. the term ‘refugees’ has been replaced by the term ‘asylum’) and a new translation of the phrase ‘subsidiary protection’, which has impeded access to rights as the instruments currently in force use old terminology.

¹Official Gazette of Montenegro No 45/06.

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From the date the original Asylum Act first applied to 30 May 2018, a total of 12 735 asylum applications were submitted in Montenegro. However, most of them were dropped. The main reasons for this are that asylum seekers do not see Montenegro as their final destination and that the opportunities for integration are scarce. For them Montenegro is merely a stopover on their way to the EU.

The new Asylum Act has introduced significant changes to the asylum system. The new Act introduces the following changes: possibility of setting up border facilities in which asylum seekers may be kept for up to 28 days; transfer of reception duties from the Ministry of Labour and Social Welfare to the Ministry of the Interior; fast-track procedures for granting asylum status; second-instance review, by the Administrative Court, of decisions granting/refusing refugee status; individual integration plans for those granted protection, under the supervision of the Ministry of Labour and Social Welfare.

In 2017 the Refugees Directorate was appointed as the state body in charge of integration. A working group on integration was set up bringing together representatives from the education and health ministries, the employment agency and others. However, the ministries provided limited input and the planned integration budget has fallen short of the mark. In December 2017 the Government adopted standard operating procedures for attending to children separated from their parents or unaccompanied, which focus on the proactive identification of potential trafficking, and other, victims.

Montenegro remains a largely transit country. While access to the country has become more restricted, Montenegro has generally remained open to asylum seekers, who are now required to go through a new preliminary phase of declaring their intention of seeking asylum before submitting their asylum application.

In total, 849 asylum applications were submitted by the end of 2017, up 253% (335) on 2016. Most of the applications were submitted by men (779 or 92%) and significantly fewer by women (70 or 8%). 798 (94%) of the applicants were adults, while 51 (6%) were minors (including a sole unaccompanied child). The main countries of origin were Algeria (393 / 46.3%), Morocco (88 / 10.4%), Syria (71 / 8.4%) and Pakistan (64 / 7.5%).

Between 1 January and 31 October 2018 Montenegro processed 4 148 declarations of intention to seek asylum, 2 859 of which were subsequently followed up by an actual asylum application, up 236% on 2017 (849). Men submitted the majority of the applications (2 556 / 89%), while the share of women was 11% (303). A total of 2 597 (91%) applicants were adults, while 262 (9%) were minors (including a sole unaccompanied child). The main countries of origin were Syria (1099 / 38%), Pakistan (634 / 22%) and Algeria (288 / 10%).

The apparent discrepancy between the number of intended and actual asylum applications corroborates the fact that many seek asylum in Montenegro only to get to Western Europe. However, the discrepancy is also due to the slow processing of applications, which raises concerns regarding the efficiency of the system of international protection for those in need.

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According to the data received from UNHCR, of a total of 2 859 interviews booked since 31 October, only 58 (2%) actually took place. After the 58 cases were examined, only 12 people were ultimately granted international protection in 2018. The total number of refugees/migrants granted subsidiary protection in Montenegro is currently 69.

According to the 2017 report by the Ombudsman of Montenegro, 'a total of 10 465 applications for protection were submitted between 2007 and 13 February 2018, 58 of which were approved: 31 as refugees and 27 under the additional protection scheme. There are currently 29 cases where protection has been approved, 16 as refugees and 13 as additional protection. Refugee status has been granted to six people from Yemen, two from Syria, seven from Cuba and one from Lebanon, while additional protection has been granted to four people from Yemen, three from Belarus, one from Morocco, two from Ukraine one from Ghana and two from Afghanistan.

Given the fact that, once discovered, illegal immigrants would apply for asylum, the number of applications grew together with their numbers. The 2 605 asylum applications submitted between January and September 2018 represent an increase of 300% over 2017. 85% of all applications were submitted by seekers from Syria, Pakistan, Algeria, Iraq and Morocco.

The existing capacity of the asylum centre in Spuž (located some 10 km from the capital) is limited to 65+15 people. Since August 2017 this capacity has been exceeded on a few occasions. For this reason the Government has leased private premises at Konik outside Podgorica, capable of accommodating some 200 people. The current capacity of 80 at the Spuž reception centre will be expanded to 104 with the construction of a container park in the courtyard. Throughout 2018 these facilities housed 3 153 people altogether (among them 180 women and 263 children), but mostly only for a few days given the huge drop in migrant numbers.

The Spuž reception centre for people seeking international protection currently accommodates women, families and those in dire need, while men are housed at Konik. Whereas the facilities at the Spuž centre are fit for purpose, the Konik site is facing frequent security issues and poor accommodation conditions. The overall accommodation capacity has been estimated to be 269 beds/people. While access to services has often been a challenge, asylum seekers are provided with assistance, which includes access to healthcare and security, by the staff of the reception centre and the Ministry of the Interior with the help of international organisations and NGOs. Montenegro plans to increase its reception capacity by setting up a transit centre at Božaj close to the Albanian border. The centre is to house immigrants who have entered the country and those who have expressed the intention of seeking asylum in Montenegro. As the centre will cater to both legal and illegal immigrants, the facilities will have to be equipped accordingly. Illegal immigrants will be housed in a closed facility, whereas asylum seekers will have an open facility at their disposal.

Recommendations

- Given the increasing numbers of asylum seekers, the Božaj centre, which will be operated by border police, will not suffice. Therefore, Montenegro should build additional permanent facilities in the vicinity of the Spuž centre, which could house another 200 asylum seekers and provide equal standards of accommodation and access to services. The government should also set up additional appropriate accommodation for unaccompanied children.
- Particular attention should be given to creating conditions that facilitate access to healthcare and to the process of integration of refugees under international protection through coordinated cooperation of state bodies at various levels. Montenegro should provide appropriate funding to set in motion integration activities and ensure the full commitment of the relevant ministries with regard to the linguistic, social and economic integration and the healthcare and social welfare of immigrants. People under international protection should be given better opportunities to integrate into society. Successful social and economic integration of refugees depends primarily on the availability of language courses and help in finding work and getting access to the property market.
- Implementing regulations pursuant to the Act on the international and temporary protection of foreigners should be adopted as a matter of priority with a view to bringing into line all the relevant legislation and creating scope for universal access to rights, particularly healthcare.
- The border police, the Asylum Directorate, the ministries of education, health and labour, and the Administrative Court should definitely align their practice with the latest legal standards on registration, the granting of status, integration policy and appeals. Additional capacity is needed, along with staff training, before the legal obligations can be fully met.
- An effective system should be set up at the border for processing immigrants who intend to seek asylum in order to direct them from border checks to the reception system for prospective asylum seekers. A questionnaire should be drawn up with a view to identifying asylum seekers and people with special needs, who are to undergo asylum procedures, whereas economic immigrants and victims of trafficking must be processed under the Aliens Act.
- Among other things, a suitable registration system incorporating a database should be set up for the electronic identification of applicants through fingerprinting.
- Fast-track processing of clearly justified/unjustified applications should be available.
- The Asylum Office of the Ministry of the Interior and the Administrative Court should assist the competent bodies in creating a just and efficient asylum procedure.
- UNHCR, NGOs and other organisations protecting the rights of asylum seekers should be given full access to all facilities housing people who have applied for international protection.

- The reception and operational capacity of the asylum centre should be improved to meet the standards in force.

COMMENTARY ON THE APPLICATION OF THE ACT ON THE INTERNATIONAL AND TEMPORARY PROTECTION OF FOREIGNERS

- Pursuant to Article 35 of the Act, a foreigner wishing to apply for international protection must submit the application to the Ministry of the Interior as soon as possible, but no later than 15 days after expressing his/her intention to do so. The actual certificate proving that the applicant has expressed his/her intention of applying for international protection is missing the explicit caveat that it expires in 15 days, i.e. that the applicant has to submit his/her application within 15 days of the date of the certificate.

Recommendation The certificate proving that the applicant has expressed his/her intention of applying for international protection should state that this must be done within 15 days. It would also be desirable for the certificate to be issued in at least two languages (Montenegrin and English, i.e. a language the applicant understands).

- Pursuant to Article 46 of the Act the procedure for granting international protection is to be suspended if the applicant: (4) is absent from his/her place of residence for more than three consecutive days without having informed, or obtained approval from, the reception centre or the Ministry, except in cases of force majeure. This provision concerns only the reception centre. In practice people seeking international protection are also housed at the semi-formal facility in the Konik suburb of Podgorica, where presence lists are kept on the basis of presence at lunchtime. Recently, however, a completely unlawful practice has been established whereby people missing two lunches in a row are arbitrarily deleted from the list of occupants of the semi-formal facility. There have been situations where a person has attended breakfast and supper, but for some reason missed lunch, for two consecutive days. As a result they were unjustly removed from the list of occupants.

Recommendation The semi-formal facility should be subject to the same rules that apply to the reception centre.

- Pursuant to Article 71 of the Act the Ministry of the Interior is to issue a foreigner seeking international protection, within three days of his submitting the application, with a certificate proving that the application has been submitted; this certificate then serves as a residence permit until a final decision granting/refusing international protection is issued. The certificate on the submission of an application for international protection is issued exclusively in Montenegrin.

Recommendation The certificate issued under the abovementioned article should be issued in Montenegrin and in a language the refugee understands.

- According to Article 77 of the Act asylum seekers and foreigners under subsidiary protection are to be provided with suitable accommodation and a cash allowance for a maximum of two years from the date of service of the decision granting international protection. The conditions and manner of providing foreigners with accommodation as per the first paragraph of that article are to be laid down by the state administration body responsible for social welfare. In practice the Refugees Directorate implements the provision on the accommodation of people under international protection by awarding them a sum of €120 per family member. As a result, in order to find suitable accommodation, these people are forced to negotiate the language barrier and the unfamiliar environment alone. It is also unclear how the abovementioned sum has been set and if it can at all cover the cost of accommodation of a single person.

Recommendation The provision of the Act stating that accommodation is to be ensured should be implemented rather than bypassed by awarding a cash allowance.

SOURCES

Data and reports from the Civic Alliance

Data and reports from UNHCR Montenegro

Reports by the European Commission

Reports by the Ombudsman